

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JASON DUNAGAN,)
)
 Plaintiff,) TC-MD 060694B
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 State of Oregon,)
)
 Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on Defendant’s motion to dismiss, filed with its Answer on October 11, 2006, requesting that the Complaint be dismissed.

A case management conference was convened on December 12, 2006. Jason A. Dunagan appeared on his own behalf; Laurie Fery represented Defendant. Subsequently, written submissions were filed. The record closed February 15, 2006.

Defendant issued its Notice of Deficiency for the 2002 tax year on March 9, 2006. It was followed by a Notice of Deficiency Assessment on April 11, 2006. Plaintiff was advised of his appeals rights to this court and, specifically, that there was a 90 day period within which to perfect an appeal. Those appeal rights expired July 10, 2006.

On July 13, 2006 the court received a complaint form from Plaintiff with certain attachments. It did not include the required \$25 filing fee or a request for a waiver of that fee. The court responded on July 14 by returning his form and the attachments. He was advised that “[i]n order to have a valid appeal filed with the Magistrate Division, you must submit a filing fee with the Complaint of \$25.00”

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On September 8, 2006, the court received \$25 in cash from Plaintiff; no Complaint form was attached. A September 14 letter from the court cited a rule of the Magistrate Division - Tax Court Rule-Magistrate Division (TCR-MD) 1. Plaintiff was advised “[i]f you submit an original signed Complaint with a copy of the document you are appealing by *September 25, 2006*, your appeal will be *filed* upon receipt of the signed Complaint.” (Emphasis in original). The Complaint form was finally received and officially filed by this court on September 21, 2006.

ORS 305.490(1)(a)¹ mandates a filing fee² for each complaint submitted to the court. The rules of the Magistrate Division are clear. TCR-MD 1(A) states:

“To begin an appeal to the Magistrate Division, a party must deliver or mail to the court *all of the following*:

“A.(1) A written complaint on the form provided by the court, or in similar format; *and*

“A.(2) A filing fee of \$25 for each complaint filed.” (Emphasis added).

Here, the two items necessary were not paired and received by the court until September 21, 2006. That is the filing date of this appeal. It is clearly too late.

The Notice of Deficiency Assessment was mailed to Plaintiff on April 11, 2006. The complete Complaint was filed on September 21, 2006. That interval is longer than the 90 days required by ORS 305.280(2), which provides:

“An appeal under ORS 323.416 * * * or from any notice of assessment or refund denial issued by the Department of Revenue with respect to a tax imposed under ORS chapter 118, 308, 308A, 310, 314, 316, 317, 318, 321 or this chapter, or collected pursuant to ORS 305.620, shall be filed within 90 days after the date of the notice. An appeal from a proposed adjustment under ORS 305.270 shall be filed within 90 days after the date the notice of adjustment is final.”

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¹ All references to the Oregon Revised Statutes (ORS) are to 2005.

² Or a fee waiver request.

The court is not aware of any circumstances that would extend the strict statutory limit of 90 days. The appeal was submitted too late and must be dismissed.³ This finding is consistent with other similar cases presented to this court. *See Slack v. Dept. of Rev.*, TC-MD No 030861D (Feb 20, 2004). Defendant's motion is granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this _____ day of March 2007.

JEFFREY S. MATTSON
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Magistrate Jeffrey S. Mattson on March 1, 2007. The Court filed and entered this document on March 1, 2007.

³ ORS 305.280(3) may allow certain later appeals after payment in full has been made of all taxes, penalties, and interest.